CHAPTER 18

TEMPORARY DISABILITY BENEFITS

Authority

N.J.S.A. 43:21–25 et seq.

Source and Effective Date

R.2003 d.214, effective April 28, 2003.
See: 35 N.J.R. 1039(a), 35 N.J.R. 2226(a).

Chapter Expiration Date

Chapter 18, Temporary Disability Benefits, expires on April 28, 2008.

Chapter Historical Note

The provisions of Chapter 18, Temporary Disability Benefits, were filed and became effective prior to September 1, 1969. Pursuant to Executive No. 66(1978), Chapter 18, Temporary Disability Benefits, was readopted as R.1993 d.141. See: 25 N.J.R. 262(a), 25 N.J.R. 1515(c). Added Appendix by R.1994 d.406, effective August 1, 1994. See: 26 N.J.R. 2174(a), 26 N.J.R. 3154(a).

Pursuant to Executive No. 66(1978), Chapter 18, Temporary Disability Benefits, was readopted as R.1998 d.157. See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a)

Pursuant to Executive No. 66(1978), Chapter 18, Temporary Disability Benefits, was readopted as R.2003 d.214. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

12:18–1.1 Definitions
12:18–1.2 Application for exemptions
12:18–1.3 Service of papers
12:18–1.4 Reimbursement of funds
12:18–1.5 Offset by workers' compensation award when temporary disability benefits are payable based on claimant's employment with another employer
12:18–1.6 Completion of medical certifications by licensed medical practitioner

SUBCHAPTER 2. PRIVATE PLANS

12:18–2.1 Extent of coverage
12:18–2.2 Benefits
12:18–2.3 Proof of coverage
12:18–2.4 Choice of doctor
12:18–2.5 Nonprofit provision
12:18–2.6 Appeals
12:18–2.7 Review
12:18–2.8 Application for approval
12:18–2.9 Minimum plan requirements
12:18–2.10 Concurrent coverage
12:18–2.11 Employee consent
12:18–2.12 Evidence of consent
12:18–2.13 Certificate of approval; effective date
12:18–2.14 Withdrawal of certificate of approval
12:18–2.15 Termination on petition by employees
12:18–2.16 Eligibility to petition
12:18–2.17 Requirements of election
12:18–2.18 Retention of election records
12:18–2.19 Certification of election results
12:18–2.20 Discontinuance
12:18–2.21 Responsibility of employer on withdrawal of certificate of approval
12:18–2.22 Insurer liability
12:18–2.23 Mandatory provision
12:18–2.24 Security required
12:18–2.25 Security exemption
12:18–2.26 Disposition of security upon termination
12:18–2.27 Exchange of information
12:18–2.28 Notice from employers
12:18–2.29 Reports by self-insurers
12:18–2.30 Reports by unions and other benefit payers
12:18–2.31 Reports by insurance companies
12:18–2.32 Reports by employers having two or more plans
12:18–2.33 Unemployment disability account deficit
12:18–2.34 Assessment of costs of administration
12:18–2.35 Assessment of amount of refund of workers' contributions applicable to private plans
12:18–2.36 Liability of successor employer
12:18–2.37 Continuation of plan on successor employer

SUBCHAPTER 3. STATE PLAN

12:18–3.1 Extent of coverage
12:18–3.2 Notice and proof of disability
12:18–3.3 Filing of claims for benefits
12:18–3.4 Reduction of benefits
12:18–3.5 Concurrent coverage
12:18–3.6 Notice to claimant and employer
12:18–3.7 Notice required from employers
12:18–3.8 Filing of appeals by claimants or employers
12:18–3.9 Rules on appeal
12:18–3.10 (Reserved)
12:18–3.11 Reduced work week

APPENDIX PRIVATE PLAN TEMPORARY DISABILITY INSURANCE CASES

SUBCHAPTER 1. GENERAL PROVISIONS

12:18–1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Temporary Disability Benefits Law (N.J.S.A. 43:21–25 et seq.).

"Base year" with respect to a period of disability means the 52 consecutive calendar weeks immediately preceding the calendar week in which the period of disability commenced.

"Benefits" means the disability benefits provided by the Temporary Disability Benefits Law.

"Claimant" means an individual who has filed a claim for disability benefits or who has notified the Division or the employer, nominee, designee, trustee, union, association of employees, insurer or organization paying benefits under a private plan that he or she expects to file such a claim.

"Claimant's authorized representative" means an individual who represents or acts in behalf of a claimant who is

incapable of fulfilling the requirements of filing claims for disability benefits, and who is so authorized by a power of attorney or other authorization satisfactory to the Division. Such authorized representative must file with the Division, on a form prescribed by the Director, a duly sworn affidavit that the claimant is incapable of making a claim for disability benefits and that he or she assumes the responsibility of acting in behalf of such claimant in accordance with the Act and this chapter. Such filing must be supported by medical documentation of incapacity by a licensed medical practitioner.

"Commissioner" means the Commissioner of Labor.

"Director" means the Director of the Division of Temporary Disability Insurance in the Department of Labor.

"Disability" or "disabled" means both mental or physical illness and mental or physical injury.

"Division" means the Division of Temporary Disability Insurance in the Department of Labor Program.

"Employee" means a covered individual as defined in N.J.S.A. 43:21-27(b). With respect to any one employer the term shall mean such a covered individual who is in employment, as defined by the Unemployment Compensation Law and Regulations promulgated thereunder, for which he or she is entitled to remuneration from such employer or who has been out of such employment for less than two weeks and has not become employed by another employer, during such period.

"Employer" means a covered employer as defined in N.J.S.A. 43:21-27(a).

"Fund" means the State Disability Benefits Fund, as set forth in N.J.S.A. 43:21-46.

"Insurer" means any insurance company duly authorized to do business in the State of New Jersey, employer acting as a self-insurer, nominee, designee, trustee, union, association of employees or organization which has undertaken to pay benefits under a private plan.

"Licensed medical practitioner" means a legally licensed physician, dentist, optometrist, podiatrist, practicing psychologist, or chiropractor.

"Private plan" means a private plan approved by the Division as defined in N.J.S.A. 43:21-32.

"Proof and claim for disability benefits" means the proof of disability and claim for benefits initially filed with respect to a period of disability on a form prescribed by the Director.

"Supplemental proof and claim for disability benefits" means the proof and claim certifying to the continuance of disability on a form prescribed by the Director.

"Week" means a period of seven consecutive days starting with the day of disability.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
In "Base year", deleted "commencing on or after January 1, 1953" following "disability", and decreased the base year from 53 consecutive calendar weeks to 52 consecutive calendar weeks; in "Claimant", added "by a licensed medical practitioner" at the end; inserted "Division" and "Licensed medical practitioner"; and in "Private plan", added a reference to N.J.S.A. 43:21-32.

Case Notes

Musicians hired by band were employees rather than independent contractors, and thus band was required to pay unemployment and disability taxes on wages paid to musicians. Kiely v. Department of Labor, 96 N.J.A.R.2d (LBR) 5.

12:18–1.2 Application for exemptions

Any employee desiring to secure exemption from the provisions of the Act shall make application therefor on a form and in a manner prescribed by the Director.

12:18–1.3 Service of papers

(a) Any and all written communications issued by the Division may be served personally or by registered or certified mail or by telegram. A copy of the notice may be left at the principal office or place of business in New Jersey of the person required to be served.

(b) Such service shall constitute due notice.

(c) The verification by the individual who served the notice, or the return post office receipt of the registered or certified mail, or telegram receipt shall be proof that notice was served.

Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
Rewrote (a) and (c).

12:18–1.4 Reimbursement of funds

If benefits have been paid in error to a claimant by one program (either the State plan, Disability During Unemployment, or a private plan) for a period of disability and the claimant is correctly entitled to benefits under another program (either the State plan, Disability During Unemployment, or a private plan) for that same period of disability, the Division may arrange for a reimbursement of funds between the two programs. If it is determined that the benefits were received as a result of the claimant's making a false statement knowing it to be false or knowingly failing to disclose a material fact, the individual shall be subject to a fine and repayment of the overpaid amount under the provisions of N.J.S.A. 43:21-55(a).

Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
Rewrote the section.

Case Notes

Earlier determinations of claimant's qualification for unemployment compensation benefits precluded reimbursement action when claimant was subsequently disqualified. In the Matter of P.V.C., 96 N.J.A.R.2d (UCC) 12.

Appeal Tribunal's reference to N.J.A.C. 12:17–10.2 in denying temporary disability benefits and demanding refund of payments made was misplaced, as that rule applies only to unemployment benefits refunds; no comparable provision deals with temporary disability benefits; claimant who was under care of psychologist was not entitled to temporary disability benefits, but was not required to repay benefits received absent an allegation of false statement or representation by claimant. Ross v. Bd. of Review Dep't of Labor, 212 N.J.Super. 467, 515 A.2d 794 (App.Div.1984).

12:18–1.5 Offset by workers' compensation award when temporary disability benefits are payable based on claimant's employment with another employer

(a) If a covered individual with more than one employer receives temporary workers' compensation benefits for an injury or illness incurred at one place of employment and that individual files a claim for New Jersey temporary disability benefits as a result of the same injury or illness on the basis of his or her employment with the other employer(s), those benefits are payable under the New Jersey State plan or an approved private plan provided that:

1. The claimant otherwise meets the eligibility criteria for temporary disability benefits in accordance with N.J.S.A. 43:21–25 et seq.;

2. Wages from all covered employers are used to calculate the temporary disability insurance weekly benefit rate as defined in N.J.S.A. 43:21–40 and the maximum benefit amount as defined in N.J.S.A. 43:21–38;

3. The temporary disability insurance weekly benefit rate is reduced by the temporary workers' compensation weekly benefit rate;

4. The claimant receives the temporary disability insurance benefits at the adjusted rate; and

5. Any such reduction in the temporary disability insurance weekly benefit rate shall also reduce the maximum total benefits payable during the period of disability.

(b) In such cases, the most recent covered employer who is not a party in the workers' compensation claim, shall be considered as the last employer under the New Jersey temporary disability benefits law. If the last employer is covered under the New Jersey State plan, benefits shall be paid under the State plan and shall be charged to the account of that employer. If the last employer is covered under an approved private plan, that plan shall be responsible for the payment of benefits.

New Rule, R.2002 d.45, effective February 4, 2002.
See: 33 N.J.R. 3622(a), 34 N.J.R. 770(b).

12:18–1.6 Completion of medical certifications by licensed medical practitioner

No licensed medical practitioner as defined in N.J.A.C. 12:18–1.1 shall charge a patient a fee for services rendered in completing forms issued by the Division of Temporary Disability Insurance or any private insurance provider requesting medical information associated with the filing of any initial or continued claim for payment of any benefits under the provisions of the New Jersey Temporary Disability Benefits Law, N.J.S.A. 43:21–25 et seq.

New Rule, R.2003 d.214, effective May 19, 2003.
See: 35 N.J.R. 1039(a), 35 N.J.R. 2226(a).

SUBCHAPTER 2. PRIVATE PLANS

12:18–2.1 Extent of coverage

(a) All employees of the employer shall be covered by one or more private plans, without restrictions or exclusions, except that, subject to the approval of the Division, any private plan may exclude employees of a separate unit, craft, organization, plant, department or establishment, or other class or classes of employees. Application for such exclusion shall be submitted on a form and in a manner prescribed by the Director. The Division may not approve the exclusion of a class or classes of employees determined by the age, sex or race of the employees or by the wages paid such employees, if, in the opinion of the Division, such exclusion would result in a substantial selection of risk adverse to the State plan. For the purposes of this regulation, the employees of an employing unit (not a subject employer) performing services for an employer, as defined in N.J.S.A. 43:21–19(g) shall be considered a class of employees which may be excluded.

(b) Employees excluded from a private plan shall be covered under the State plan and the employer shall be liable for the deduction and payment of workers' contributions and employer's contributions, as required by N.J.S.A. 43:21–7.

(c) All proposed private plans shall be submitted for review and approval by the Division. An employer failing to secure the approval of a private plan shall be deemed to be covered under the State plan and the employer shall be liable for the deduction of workers' contributions and payments of workers' and employer's contributions to the Fund as required by N.J.S.A. 43:21–7 until such date as a private plan is effective.

(d) An employee who ceases to be covered by a private plan, whether by termination of the plan, changing employers or for any other reason, shall, if otherwise eligible, become entitled to disability benefits from the Fund.

(e) The responsibility for coverage shall be established by the covered individual's last employer. The application for benefits shall be processed by the insurer, if the employer has an approved private plan and the individual is covered by that plan, or the State plan if the employer has State plan coverage. However, claims coming within the purview of N.J.A.C. 12:18–1.5, 2.10 or 3.5 shall be governed thereby.

Amended by R.2003 d.214, effective May 19, 2003.
See: 35 N.J.R. 1039(a), 35 N.J.R. 2226(a).
Added (e).

Case Notes

Employer must participate in either state plan or qualified private plan of disability benefits. O'Boyle v. Prudential Ins. Co. of America, 241 N.J.Super. 503, 575 A.2d 515 (A.D.1990).

Financial corporation liable for unemployment and temporary disability insurance assessments for computer expert hired to debug system since expert did not qualify as independent contractor. Jonassen and Associates, Inc. v. Department of Labor, 97 N.J.A.R.2d (LBR) 9.

Pharmaceutical consulting firm liable for unemployment and temporary disability insurance assessments for consultants since these experts failed to qualify as independent contractors. Kessler v. Department of Labor, 97 N.J.A.R.2d (LBR) 7.

12:18–2.2 Benefits

(a) An employee shall not be entitled to any benefits from the Fund with respect to any period of disability commencing while he or she is covered under a private plan.

(b) An employee shall not be paid any benefits for disability during unemployment (N.J.S.A. 43:21–3, 4) for any period of disability commencing while he or she is a "covered individual" as defined in N.J.S.A. 43:21–27(b).

(c) The benefits provided by a private plan shall be set forth in the plan both as to eligibility requirements and amounts payable.

(d) If application for benefits is made under the State plan or Disability During Unemployment and it is determined that the claim should have been made under a private plan, an employee shall not be deprived of benefits under the private plan for failure to give timely notice and proof of disability provided that:

1. The application to the State plan would have been timely notice to the private plan if it had been then made; and

2. Proof of disability is furnished under such private plan within the period required therein or within 30 days after the employee has notice that the claim should have been made thereunder.

(e) If an employee is paid benefits under a private plan, the amount of such benefits shall not be deducted from the amount of benefits to which he or she may be entitled under the State plan, or under N.J.S.A. 43:21–3 and N.J.S.A. 43:21–4 as an unemployed claimant, for a subsequent period of disability. If an employee is paid benefits under the State plan, the amount of such benefits shall not be deducted from the amount of benefits to which he or she may be entitled under a private plan, or under N.J.S.A. 43:21–3 and N.J.S.A. 43:21–4 as an unemployed claimant for a subsequent period of disability.

(f) If the benefits claimed by an employee or his or her authorized representative under a private plan are denied, such denial shall be by a written notice to the employee or his or her authorized representative, giving the reason therefor and stating the employee's appeal rights as provided under N.J.A.C. 12:18–2.6 and N.J.A.C. 1:12A. Upon the issuance of such notice, the Division shall be immediately furnished with a copy of the claim and the notice of denial, or facsimiles thereof.

(g) The private plan shall provide for payment of benefits to employees weekly, biweekly, or at such intervals as the employee is customarily paid wages, unless otherwise approved by the Director.

(h) No reduction in the amount or duration of benefits or increase in the rate of employee contributions shall be made without prior approval of the Division. Approval shall be given if the Division finds that the plan, after such modification, continues to meet the requirements of the Act and this chapter and, if the employees are to contribute toward the cost of such modified plan, that a majority of the employees covered by the plan have agreed to the modification by written election (by ballot or otherwise) in accordance with this chapter.

1. The Division shall be given prompt notice of any change to a private plan, which change does not affect nor alter the provisions of the plan, and, therefore, does not require approval under this section.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
In (f), substituted "appeal rights as provided under N.J.A.C. 12:18–2.6 and N.J.A.C. 1:12A" for "rights to a hearing in accordance with the Act" at the end of the first sentence.
Amended by R.2003 d.214, effective May 19, 2003.
See: 35 N.J.R. 1039(a), 35 N.J.R. 2226(a).
Rewrote (h).

Case Notes

Under no fault insurance law, carrier was entitled to deduct amount equal to benefits collectible under private temporary disability benefit plan, in making income continuation payments. Puzio v. New Jersey Manufacturers Insurance Co., 165 N.J.Super. 585, 398 A.2d 934 (Cty. Ct.1979).

12:18–2.3 Proof of coverage

Notice, in a form approved by the Director, of the benefits provided by the private plan shall be furnished to the covered employees either by individual certificates or other direct notification at the time of coverage, or by conspicuous and continuing posting at the place of employment. This notice shall reflect current rates, eligibility requirements, benefit entitlements, and appeal rights to the Division as specified in N.J.A.C. 12:18–2.6. This notice shall be available for inspection at the work site. A copy of the notice shall be submitted annually to the Division.

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
Added the second and third sentences.

12:18–2.4 Choice of doctor

(a) An employee covered under a private plan shall have the right to choose his or her own attending licensed medical practitioner, but he or she may be required to submit, not more often than once a week, to an examination by a licensed medical practitioner designated by the employer, insurer or organization paying benefits.

(b) Where a covered employee has utilized a licensed medical practitioner, and that licensed medical practitioner has examined the covered employee and has diagnosed him or her with a disabling condition, and where the licensed medical practitioner has certified that the employee's condition renders him or her unable to perform the duties of his or her employment for a given period of time, the employer, insurer or organization paying benefits may only deny benefits to the covered employee during that period so certified where:

1. The employer, insurer or organization paying benefits has contacted the covered employee's personal licensed medical practitioner and has reached a mutual agreement therewith as to a change in the period of the covered employee's disability;

2. A licensed medical practitioner designated by the employer, insurer or organization paying benefits has examined the covered employee and has determined that the covered employee is no longer disabled. Where such a determination has been made, benefits shall not be paid beyond the date of the examination;

3. A covered employee refuses to submit to or fails to attend an examination conducted by a licensed medical practitioner designated by the employer, insurer or organization paying benefits, in which case the covered employee shall be disqualified from receiving all benefits for the period of disability in question, except as to benefits already paid; or

4. The employer, insurer or organization paying benefits has obtained credible factual evidence showing that the covered employee is performing activities that demonstrate that he or she is able to perform the duties of his or her regular employment. In such instances, benefits shall not be paid beyond the date that such factual evidence is obtained.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
Substituted references to medical practitioners for references to physicians, dentists, chiropractors, podiatrists, practicing psychologists, and optometrists throughout.
Amended by R.2000 d.327, effective August 7, 2000.
See: 32 N.J.R. 169(a), 32 N.J.R. 1700(a), 32 N.J.R. 2908(a).
Designated existing paragraph as (a) and added new (b).

12:18–2.5 Nonprofit provision

No employer, union or association representing employees and no person acting in behalf of any of the foregoing shall so administer or apply the provisions of a private plan as to derive any profit therefrom.

12:18–2.6 Appeals

(a) The appeal procedures for private plan temporary disability cases are found at N.J.A.C. 1:12A and are appendixed at the end of this chapter.

(b) If an employee covered under a private plan is denied benefits by the insurer for any period of disability or he or she disagrees with a determination of benefits made by the insurer, he or she has the right to appeal the determination or denial.

(c) The appeal or complaint shall be filed with the Division within one year after the beginning of the period for which benefits are claimed. Such appeal or complaint shall be filed, either personally or by mail, by the employee or his or her representative. A late appeal shall be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause exists in circumstances where it is shown that:

1. The delay in filing the appeal was due to circumstances beyond the control of the appellant; or

2. The appellant delayed filing the appeal for circumstances which could not have been reasonably foreseen or prevented.

(d) Any appeal or complaint by an employee claiming benefits under an approved private plan shall be filed on a form and in a manner prescribed by the Director. The employee must include the reasons for the appeal or complaint and explain why he or she disagrees with the denial of benefits on the form.

(e) Upon receipt of such appeal or complaint, the Division shall conduct an investigation and such informal conferences as it may deem necessary to determine the facts and settle the issues.

(f) Any appeal or complaint shall be deemed filed on the day it is delivered to the office of the Division of Temporary Disability Insurance, Labor Building, PO Box 957, John Fitch Plaza, Trenton, New Jersey 08625–0957, or if mailed, the complaint shall be deemed filed on the postmarked date appearing on the envelope in which the complaint is mailed; provided, postage is prepaid and the envelope is properly addressed.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1994 d.407, effective August 1, 1994.
See: 26 N.J.R. 2195(b), 26 N.J.R. 3178(b).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
Rewrote the section.

12:18–2.7 Review

(a) All approved private plans shall be reviewed by the Division during their continuance to insure compliance with the law and regulations thereunder.

(b) Where a decision to accept or deny a claim is not made within 45 days of filing of claim, the insurer shall notify the Division of such fact giving the reasons therefor.

12:18–2.8 Application for approval

(a) An employer desiring to establish a private plan for the payment of benefits to employees, shall file an application on a form and in a manner prescribed by the Director. In requesting the form, the employer shall inform the Division whether the benefits will be provided by a contract of insurance, or by an agreement between the employer and a union or association representing the employees or by the employer as a self-insurer.

(b) If two or more employers desire to have their private plans insured by a single policy of insurance, either by mutual agreement or by agreement as set forth in (a) above, each shall file an application for approval on a form and in a manner prescribed by the Director, designating a nominee, designee, trustee or one of them as the duly authorized agent for the purposes of this Act.

(c) All documents required by the Division for the completion of the approval process shall be submitted within 90 days of the date the application is received. A new application shall be filed if all such documents are not received within 90 days unless the employer can demonstrate good cause for the delay. For the purposes of this section, "good cause" means any situation over which the employer did not have control and which was so compelling as to prevent the employer from submitting the documents as required by the Division.

(d) An application submitted for approval of a private plan shall bear the signature of an authorized representative of the insuring organization, if the private plan is to be insured by an admitted insurer or union welfare fund, and:

1. A corporate officer if the employer is a corporation;

2. The owner if the employer is an individual; or

3. A partner if the employer is a partnership.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
Added (c).
Amended by R.2003 d.214, effective May 19, 2003.
See: 35 N.J.R. 1039(a), 35 N.J.R. 2226(a).
Added (d).

12:18–2.9 Minimum plan requirements

(a) Each private plan, in order to secure Division approval, shall provide to the employees covered thereby rights equal at least to those set forth in N.J.S.A. 43:21–37 to 43:21–42 inclusive, by assuring that:

1. The private plan shall cover all employees, except as provided elsewhere in this chapter, for any disability commencing while the plan is in effect.

2. Eligibility requirements for benefits shall be no more restrictive than those requirements for benefits payable under the State plan.

3. Except as provided for in N.J.A.C. 12:18–2.10 (Concurrent coverage) of this chapter, the benefits payable to each employee covered thereunder shall be at least equal, in both weekly amount and duration, to those which would be payable to the employee under the State plan, but for his or her inclusion in the private plan.

(b) An employer may provide temporary disability insurance benefits through a plan established solely for the administration of benefits required pursuant to the Temporary Disability Benefits Law, N.J.S.A. 43:21–25 et seq., or through a multi-benefit plan; provided, however, that, if the multi-benefit plan does not comply with all of the provisions of the New Jersey Temporary Disability Benefits Law, the employer shall establish a separate plan, maintained solely for the purpose of complying with the provisions of the law.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1997 d.142, effective March 17, 1997.
See: 29 N.J.R. 90(b), 29 N.J.R. 897(a).
Added (b).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
In (a), rewrote 1 and 2.

12:18–2.10 Concurrent coverage

(a) A private plan shall not preclude simultaneous or concurrent coverage by reason of an individual's employment with two or more employers. Such employee shall receive not less than the benefits payable under the State plan both as to benefit amount and duration.

(b) A covered individual is in "concurrent employment" if he or she is in employment with two or more employers during the last calendar day of employment immediately preceding the period of disability. The term "concurrent employers" means the covered employers with whom an employee was employed on the last day of employment.

(c) If an employee is in concurrent employment and only one employer has a private plan, then the employee shall be entitled to receive benefits under that private plan, if otherwise eligible. Such benefits shall not be less than he or she would be eligible to receive under the State plan with respect to all employment, if he or she were covered under the State plan. No benefits shall be payable under the State plan for disability commencing while he or she is covered under such private plan.

(d) If an employee is in concurrent employment with two or more employers and more than one employer has a private plan, the employee shall be entitled to receive benefits under each private plan, if otherwise eligible. Each private plan shall pay not less than the full amount the employee would be eligible to receive if covered under the State plan. When determining the amount to be paid, the private plan may take into account coverage under other private plans and benefits may be apportioned among the plans in the same proportion that the employee earned wages with each employer in the last eight calendar weeks immediately preceding the period of disability. In no event shall the employee receive less than the benefits to which he or she would be entitled under the most favorable plan, both as to weekly amount and duration.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
Rewrote (b) through (d).

Case Notes

Under no fault insurance law, carrier could deduct amount collectible under a private temporary disability belief plan, in making income continuation benefits policy payments. Puzio v. New Jersey Manufacturers Insurance Co., 165 N.J.Super. 585, 398 A.2d 934 (Cty.Ct.1979).

N.J.A.C. 12:18–2.10(c) upheld as requiring full disability payment from a private plan covering injured employee even though employee also covered by State plan; rule is proper exercise of general rulemaking power and in furtherance of the Temporary Disability Benefits Law to provide for no benefits from State plan where private plan coverage exists; N.J.A.C. 12:18–2.10(d) provides for apportionment of benefits between two or more private plans. Snedeker v. Bd. of Review, Div. of Employment Security, 139 N.J.Super. 394, 354 A.2d 331 (App.Div. 1976).

12:18–2.11 Employee consent

If employees are required to contribute to the cost of a private plan, the employer shall submit, in writing, to the employees a brief summary of the provisions of the plan, including the weekly benefit rate, the maximum amount and duration of benefits and the contributions required from the employees with respect to the benefits to be provided thereby. A majority of the employees to be covered must agree by written election (by ballot or otherwise) to the establishment of the plan which shall include the worker's contribution required. Evidence of their consent shall be shown on the application for approval.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

12:18–2.12 Evidence of consent

(a) There shall be submitted on the application for approval a statement showing the total number of eligible employees in employment by the employer and the number of employees who agreed to the plan, together with the individual ballots or documents bearing the employees' signatures of consent. The ballots or documents of consent, after review by the Division, shall be returned to the employer.

(b) The results of such election shall be posted promptly and the records pertaining thereto shall be maintained by the employer and be available for inspection by Division representatives during the existence of the private plan.

12:18–2.13 Certificate of approval; effective date

(a) The Division shall issue a "Certificate of Approval of Private Plan" which shall constitute evidence of approval of the plan by the Division.

(b) Each such private plan shall be submitted in detail to the Division and shall be approved by the Division to take effect as of the first day of the calendar quarter next following the submission date, or as of an earlier date if requested by the employer and approved by the Division. Grounds for approval of an earlier effective date include but are not limited to, whether the plan:

1. Is the result of an agreement contained in a labor-management contract; or

2. Covers a newly formed subsidiary of an employer with an existing private plan; or

3. Is the result of a succession from an employer with an existing private plan. As provided in N.J.S.A. 43:21–7(c)(7)(A), a successor in interest is an entity that acquires the organization, trade, or business, or substantially all the assets of an employer, whether by merger, consolidation, sale, transfer, descent, or otherwise.

Amended by R.1988 d.98, effective March 7, 1988.
See: 19 N.J.R. 2238(b), 20 N.J.R. 533(b).
Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

12:18–2.14 Withdrawal of certificate of approval

(a) A certificate of approval may be withdrawn or revoked upon notice and opportunity for hearing if the Division finds:

1. That there is danger that benefits accrued or to accrue will not be paid; or

2. That the security for such payment is insufficient; or

3. That there has been a failure to comply with the terms and conditions of the plan; or

4. That there has been a failure to pay benefits to eligible claimants promptly; or

5. That in the case of an insured private plan, the insurance company has given notice of the cancellation of the policy of insurance thereunder; or

6. That the employer, his or her duly authorized agent, the union or association representing the employees or any person acting in behalf of any of the foregoing are deriving a profit in instituting or administering the plan; or

7. That the employer, or insurer or any other party responsible for the payment of benefits, as the case may be, has failed to comply with the Act and regulations; or

8. Other good cause.

(b) A certificate of approval may be withdrawn or revoked effective as of the date of the occurrence of the condition, violation, event or omission forming the basis for such withdrawal or revocation, or at any subsequent date which in the judgment of the Director or his or her authorized representative, shall be necessary for the protection of the benefit rights of the employees covered by the plan. The Division shall give the employer, the insurer or organization paying benefits, and all interested parties notice of revocation or withdrawal of the certificate of approval and an opportunity for a hearing.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

12:18–2.15 Termination on petition by employees

Upon receipt by the Division of a petition to terminate a private plan, signed by not less than ten per cent of the employees covered by the private plan, the Division shall order an election, after 30 days' written notice to the employer. No such election shall be required more often than once in any 12 consecutive months. The Division shall, whenever it deems necessary, supervise such election.

12:18–2.16 Eligibility to petition

(a) An employee, to be eligible to sign any petition requesting an election to discontinue a private plan, shall be in the employ of the employer as of the date of the petition, and covered by the plan. The form of the petition requesting an election shall be prescribed by the Director.

(b) An employee, to be eligible to vote in any election to discontinue a private plan, shall be in the employ of the employer as of the date of the election and covered by the plan.

12:18–2.17 Requirements of election

(a) Any election to discontinue a private plan shall be in accordance with this Subchapter. The election shall be by written ballot but the Director may order a secret ballot if the facts so warrant. The ballot shall be so worded as to give each employee voting an opportunity to vote for or against the discontinuance of the private plan. The time and place of the election shall be convenient to employees, and on not less than 30 days' written notice by the employer to the employees. The notice of the election and the results thereof shall be given to the employees affected by one of the following methods:

1. By posting on bulletin boards in the employer's establishment or place of business for a period of not less than 30 days;

2. By mail addressed to each employee;

3. By personal service.

(b) A record of the method used shall be kept by the employer.

12:18–2.18 Retention of election records

The records pertaining to any election to discontinue a private plan shall be retained by the employer and shall be available for inspection by the Division representatives for a one-year period from the date of termination.

12:18–2.19 Certification of election results

A statement shall be submitted forthwith by the employer to the Division showing the total number of employees eligible to vote, and the number of employees who voted for and against termination of the plan.

12:18–2.20 Discontinuance

(a) As provided in the Act, a private plan shall be discontinued when the Division withdraws its approval thereof upon being furnished satisfactory evidence that a majority of the covered employees have made election in writing to discontinue such plan.

(b) An employer may discontinue a private plan upon proper notice to the Division and to the covered employees.

12:18–2.21 Responsibility of employer on withdrawal of certificate of approval

(a) The employer shall be liable for the deduction of workers' contributions and payment of workers' and employer's contributions, as required by N.J.S.A. 43:21–7, with respect to wages paid for employment subsequent to the effective date of withdrawal or revocation of the certificate of approval, unless the Division has approved another private plan to become effective on the day immediately following.

(b) Form DP–22, Notice of Withdrawal of Approval of Private Plan, shall be conspicuously posted for a period of not less than 30 days at or in the employer's factory, establishment or other premises at which the workers, who were covered under the private plan, are employed, as evidence of the termination of that plan.

Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

12:18–2.22 Insurer liability

(a) A policy of insurance providing for the payment of benefits under a private plan shall provide that the insurer shall remain liable for the payment of benefits to any employee covered by the policy and the private plan for any period of disability commencing, during the continuance of the private plan, after the policy became effective and prior to the termination of the policy.

(b) At least 60 days' notice shall be given to the Division by the insurer or the policyholder before termination of the policy becomes effective, except that, if the policy is being terminated by reason of a change of insurer, this requirement may be waived.

(c) If a policy is being terminated for nonpayment of premium, at least 15 days' written notice shall be given to the Division before termination of the policy becomes effective.

12:18–2.23 Mandatory provision

Each contract of insurance providing for the payment of benefits under a private plan shall contain a clause or clauses guaranteeing that the benefits meet the requirements of N.J.A.C. 12:18–2.9, Minimum plan requirements.

Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

12:18–2.24 Security required

(a) The security required by the Division from an employer whose private plan does not provide for the assumption of the liability to pay benefits by an insurer, duly authorized and admitted to do business in this State, shall be in the form of a cash deposit, a bond of an admitted surety insurer conditioned on the payment of obligations under the plan, or bearer bonds issued or guaranteed by the United States of America or issued by this State, the amount to be determined by the Division upon the basis of the size of the payroll, the class or classes of risks contemplated, the financial standing of the employer and any additional factors which the Division may deem proper.

(b) The amount shall not be less than one-half of the contributions which would have been paid by the employees to be covered by the private plan during the previous year, or one-half of the estimated contributions of such employees for the ensuing year, whichever is greater.

Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

12:18–2.25 Security exemption

(a) Exemption from the requirement of N.J.A.C. 12:18–2.24, Security required, shall be granted to any employer who:

1. Is exempt from insuring the employer's workers' compensation liability, as provided by law; or

2. Satisfies the Division as to the employer's financial responsibility to pay the benefits provided by the employer's plan by furnishing a complete, current financial statement and such other proof as may be acceptable to the Division. An annual review of the financial responsibility will be made.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

12:18–2.26 Disposition of security upon termination

(a) The security provided for in this subchapter should be applied by the Division to the payment of any unpaid obligations under the private plan. Upon termination of a private plan, which does not provide for the assumption by an admitted insurer of the liability to pay benefits, or upon withdrawal of approval of such private plan, the Division shall retain the security deposited, for the purpose of securing the payment of the obligations of the private plan. Upon the expiration of all benefit claims outstanding after the lapse of five complete calendar quarters following the effective date of termination or withdrawal of approval, the Division shall make a final assessment of the charges against the employer as provided in the Act and these regulations.

(b) If the amount of such assessment is not paid within 30 days after the date of notice thereof, the Division may collect the amount of the assessment out of the security on deposit, or may call upon the surety insurer for payment. Any security thereafter remaining shall be returned to the employer or the employer's legal representative or assignee, or the surety insurer paying the amount of such assessment shall be discharged of its obligation under the bond.

(c) The Division may make a partial return of the security at an earlier date if it finds that such security is in excess of that required.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

12:18–2.27 Exchange of information

(a) If an employee's weekly benefit amount, determined under the benefit provisions of an employer's private plan, with respect to any period of disability, is less than the maximum weekly benefit amount payable under the State plan, and such weekly benefit amount has been computed on a basis different from that provided for covered individuals under the State plan, the weekly benefit amount shall be recomputed in accordance with the provisions of the New Jersey Temporary Disability Benefit Law (N.J.S.A. 43:21–40) as amended.

(b) If such recomputed weekly benefit amount is less than the maximum weekly benefit amount payable under the State plan and the computation of the "average weekly wage" for such recomputation yields a result which is less than the individual's average weekly earnings in employment, with all covered employers, during the base weeks in

such eight calendar weeks, then the insurer which has undertaken to pay the benefits provided by the plan shall request the Division to provide such payer with a statement of the weekly wages of the employee earned from all covered employers during the eight base weeks immediately preceding the calendar week in which the employee's disability commenced.

(c) When requesting such information, such payer shall furnish the Division with the following information:

1. Name, address and Social Security number of the employee;

2. Date on which the disability commenced;

3. The names and addresses of such other employers, from whom the employee alleges to have earned wages immediately preceding his or her disability, as may be necessary to determine all wages earned in the required eight base weeks;

4. The weekly earnings of the employee from the employer during each of the calendar weeks in the 52 calendar weeks immediately preceding the disability, if any.

(d) If the private plan of an employer provides as a condition of eligibility for benefits with respect to a period of disability, that an otherwise eligible employee shall have established at least 20 or a lesser number of base weeks within the 52 calendar weeks preceding the week in which his or her period of disability commenced and the employee has not established such base weeks from his or her employment with the employer, then the insurer which has undertaken to pay the benefits provided by the plan shall request the Division to provide such payer with a statement of the number of base weeks in the employee's base year. When requesting such information, such payer shall furnish the Division with the following information:

1. Name, address and Social Security number of the employee;

2. Date on which the disability commenced;

3. The names and addresses of such other employers, from whom the employee alleges to have earned wages in the 52 calendar weeks immediately preceding his or her disability, as may be necessary to determine the required number of base weeks; and

4. The number of calendar weeks in the 52 calendar weeks immediately preceding the calendar week in which the period of disability commenced, during which the employee earned not less than the minimum base week requirement as defined in N.J.S.A. 43:21–27(i)(4) from the employer.

(e) If the private plan of an employer provides, with respect to periods of disability commencing on or after January 1, 1968, that the maximum total benefits payable to any eligible employee may be computed as an amount equal to 26 times the weekly benefit rate or ⅓ of his or her total wages in his or her base year, whichever is lesser, and it appears that such provision will be applicable with respect to any period of disability because wages earned with prior employers in the base year are lacking, then the insurer shall request the Division to provide a statement of the total wages in the employee's base year. When requesting such information, such insurer shall furnish the Division with the following information:

1. Name, address and Social Security number of the employee;

2. Date on which the disability commenced;

3. Names and addresses of other employers in the 52 weeks prior to the week in which the disability occurred;

4. Total amount of wages earned by claimant with the most recent employer.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
In (a), deleted "Section 16 of" following "provisions of" ; in (d), deleted "commencing on or after January 1, 1953" following "disability" in the first sentence; deleted a former (e); and recodified former (f) as (e).
Amended by R.2001 d.298, effective August 20, 2001.
See: 33 N.J.R. 1849(a), 33 N.J.R. 2814(b).
Rewrote (d)3 and 4.
Amended by R.2003 d.214, effective May 19, 2003.
See: 35 N.J.R. 1039(a), 35 N.J.R. 2226(a).
In (d), rewrote 3 and 4.

12:18–2.28 Notice from employers

Within 10 days after the mailing of a request for information with respect to a period of disability, each employer having a private plan shall furnish the Division with any information requested or known to the employer which may bear upon the eligibility of the claimant.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
Substituted "10 days" for "seven days" following "Within", and deleted "commencing on or after January 1, 1953" following "disability".

12:18–2.29 Reports by self-insurers

(a) For the six month periods ending June 30 and December 31 of each calendar year during which a self-insured private plan is in effect, each employer shall, on a form prescribed by the Division, file a statement, on or before the 30th day following the end of the respective six month period, showing:

1. The number of claims received during the six month period;

2. The number of claims accepted during the six month period;

3. The amount of benefits paid during the six month period;

4. Such other information as the Division may require with respect to the financial ability of the self-insurer to meet the self-insured's obligations under the plan.

(b) On or before the 30th day following the close of each calendar year during which a self-insured private plan is in effect, the employer shall, on a form prescribed by the Division, file a report showing:

1. The amount of funds available at the beginning of that year for payment of disability benefits;

2. The amount contributed by workers during that year;

3. The amount contributed by the employer during that year:

4. The amount of disability benefits paid during that year;

5. Direct cost of administration of plan during that year; and

6. The number of employees covered by the plan as of December 31.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
In (a), rewrote the introductory paragraph, and substituted references to the six month period for references to the quarter in 1 through 3; and in (b), added 6.

12:18–2.30 Reports by unions and other benefit payers

(a) For the six month periods ending June 30 and December 31 of each calendar year, each union, association of employees, nominee, trustee or organization which has assumed the liability to pay the disability benefits required under one or more private plans (which benefits are not guaranteed by a contract of insurance of an insurer duly authorized and admitted to do business in this State) shall, on a form prescribed by the Division, file a statement, on or before the 30th day following the end of the respective six month period, showing:

1. The number of claims received during the six month period;

2. The number of claims accepted during the six month period;

3. The amount of benefits paid during the six month period;

4. Such other information as the Division may require with respect to the financial ability of the union, association or employees, nominee, trustee or organization to meet their obligations under the plan.

(b) On or before the 30th day following the close of each calendar year, each union, association of employees, nominee, trustee or organization which has assumed the liability to pay the disability benefits required under one or more private plans (which benefits are not guaranteed by a contract of insurance of an insurer duly authorized and admitted to do business in this State) shall, on a form prescribed by the Division, file a report showing:

1. The amount of funds available at the beginning of that year for payment of disability benefits;

2. The amount of contributions for such disability benefits made during that year by the employer or employers whose private plan or plans provide for the payment of such disability benefits out of such funds;

3. The amount, if any, of contributions made, during that year, for such disability benefits, by workers covered under such private plan or plans;

4. The amount of such disability benefits paid, during that year, to workers covered under such private plan or plans;

5. Direct costs of administration, during that year, of such private plan or plans, expended from such funds; and

6. The number of employees covered by the plan as of December 31.

Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
In (a), substituted "For the six month periods ending June 30 and December 31 of each calendar year," for "On or before the 30th day following the close of each calendar quarter" at the beginning and inserted ", on or before the 30th day following the end of the respective six month period," following "statement" in the introductory paragraph, and substituted references to the six month period for references to the quarter in 1 through 3; and in (b), added 6.

12:18–2.31 Reports by insurance companies

(a) For the six month periods ending June 30 and December 31 of each calendar year, each insurance company which has assumed the liability to pay the disability benefits required under one or more private plans shall, on a form prescribed by the Division, file a report, on or before the 30th day following the end of the respective six month period, showing:

1. The number of claims received during the six month period;

2. The number of claims accepted during the six month period;

3. The amount of disability benefits paid during the six month period;

(b) On or before the 30th day of June following the close of each calendar year, each insurance company which has assumed the liability to pay the disability benefits required under one or more private plans shall, on a form prescribed by the Division, file a report showing:

1. Premiums earned during that year with respect to such private plans;

2. Dividends to holders of policies providing the benefits of such private plans;

3. Benefit losses incurred under such private plans;

4. Expenses incurred with respect to such private plans; and

5. The number of employees covered by each plan as of December 31.

Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
In (a), substituted "For the six month periods ending June 30 and December 31 of each calendar year," for "On or before the 30th day following the close of each calendar quarter" at the beginning and inserted ", on or before the 30th day following the end of the respective six month period," following "report" in the introductory paragraph, and substituted references to the six month period for references to the quarter in 1 through 3; and in (b), added 5.

12:18–2.32 Reports by employers having two or more plans

On or before the 30th day following the close of each calendar half-year, each employer having two or more approved private plans in effect during such calendar half-year or any portion thereof shall, on a form prescribed by the Division, file a report showing the amount of taxable wages paid during such calendar half-year to employees while covered under each such private plan.

12:18–2.33 Unemployment disability account deficit

(a) The term "unemployment disability account deficit" means any negative balance between the credits and debits of the account as determined by the Act.

(b) If the accumulated deficit at the end of any calendar year after interest and other earnings have been credited in accordance with the Act exceeds $200,000, such deficit shall be assessed and shall be collected under the provisions of N.J.S.A. 43:21–14, except that interest shall not accrue on any such assessment until 30 days after the date of notice of such assessment.

12:18–2.34 Assessment of costs of administration

Any assessment under the provisions of N.J.S.A. 43:21–48 shall be collected under the provisions of N.J.S.A. 43:21–14, except that interest shall not accrue on any such assessment until 30 days after the date of notice of such assessment.

12:18–2.35 Assessment of amount of refund of workers' contributions applicable to private plans

(a) The portion of the aggregate amount of refunds to workers during any calendar year pursuant to N.J.S.A. 43:21–7(d)(3) to be assessed against private plans shall be determined by multiplying the aggregate amount of such refunds by the ratio of taxable wages involved in such refunds and paid by employers to employees covered under private plans to the total taxable wages involved in such refunds and paid by all employers.

(b) Such amount shall be prorated among the applicable private plans in the proportion that the wages covered by each plan bears to the total private plan wages in such refunds.

(c) The amount so prorated to a private plan shall be assessed against the employer, or the insurer if the insurer has indemnified the employer with respect thereto, and shall be collected under the provisions of N.J.S.A. 43:21–14 except that interest shall not accrue on such assessment until 30 days after the date of notice of such assessment.

(d) The amounts so recovered by the Division shall be paid into the State Disability Benefits Fund. (See N.J.A.C. 12:16–15, Application for workers' refunds.)

12:18–2.36 Liability of successor employer

Any employer who acquires the organization, trade, assets or business, in whole or in part, whether by merger, consolidation, sale, transfer, descent or otherwise, from an employer liable for any assessment made under N.J.S.A. 43:21–7(d)(3), N.J.S.A. 43:21–46 and N.J.S.A. 43:21–48 shall likewise be liable for such assessment.

12:18–2.37 Continuation of plan on successor employer

(a) If there is a change in the employer and the successor employer assumes the obligations and liability of the predecessor under the plan, the plan shall be transferred to the successor, if:

1. The workers to be covered by the plan immediately after the succession are not required to contribute to the cost of the plan; or

2. The class or classes of workers covered by the plan immediately prior to the succession constitute a majority of the workers in the same class or classes employed by the successor immediately after the succession; or

3. A majority of the workers in the class or classes covered by the plan in the employ of the successor immediately after the succession give their written consent to the plan; or

4. The plan is limited to the separate unit, plant, department or establishment operated by the predecessor and the provisions of paragraphs 1, 2 or 3 of this Section are met with respect to such separate unit, plant, department or establishment.

SUBCHAPTER 3. STATE PLAN

12:18–3.1 Extent of coverage

(a) A claimant shall not be entitled to any benefits from the Fund with respect to any period of disability commencing while he or she is covered under a private plan.

(b) A claimant shall not be paid any benefits under N.J.S.A. 43:21–3 and N.J.S.A. 43:21–4 for any period of disability commencing while he or she is a "covered individual" as defined in N.J.S.A. 43:21–27(b).

(c) An individual who is covered by a private plan or is separated from his or her employment for a period of two weeks or more immediately prior to the disability shall not be entitled to any benefits under the State plan.

(d) If application for benefits is made under a private plan or for disability during unemployment (N.J.S.A. 43:21–4) and it is determined that the claim should have been made under the State plan, a claimant shall not be deprived of benefits under the State plan for failure to give timely notice and proof of disability provided that:

1. The application to the private plan or for disability during unemployment (N.J.S.A. 43:21–4) would have been timely noticed to the State plan if it had been then made; and

2. Proof of disability is made under the State plan not later than the time prescribed by the Act.

(e) If a claimant is paid benefits under the State plan, the amount of such benefits shall not be deducted from the amount of benefits to which he or she may be entitled for a subsequent period of disability under a private plan, or for disability during unemployment (N.J.S.A. 43:21–4). If a claimant is paid benefits under a private plan, the amount of such benefits shall not be deducted from the amount of benefits to which he or she may be entitled for a subsequent period of disability under the State plan, or for disability during unemployment (N.J.S.A. 43:21–4).

(f) Where a covered employee has utilized a licensed medical practitioner, and that licensed medical practitioner has examined the covered employee and has diagnosed him or her with a disabling condition, and where the licensed medical practitioner has certified that the employee's condition renders him or her unable to perform the duties of his or her employment for a given period of time, the claimant may only be denied benefits during that period so certified where:

1. The Division has contacted the covered employee's personal licensed medical practitioner and has reached a mutual agreement therewith as to a change in the period of the covered employee's disability;

2. A licensed medical practitioner designated by the Commissioner of Labor or his or her designee has examined the covered employee and has determined that the covered employee is no longer disabled. Where such a determination has been made, benefits shall not be paid beyond the date of examination;

3. A covered employee refuses to submit to or fails to attend an examination conducted by a licensed medical practitioner designated by the Commissioner of Labor or his or her designee, in which case the covered employee shall be disqualified from receiving all benefits for the period of disability in question, except as to benefits already paid; or

4. The Division has obtained credible factual evidence showing that the covered employee is performing activities that demonstrate that he or she is able to perform the duties of his or her regular employment. In such instances, benefits shall not be paid beyond the date that such factual evidence is obtained.

(g) If a physical examination of a claimant is required, the Commissioner of Labor or his or her designee shall authorize such examination to be made by a licensed medical practitioner. Upon submission of a written report of the examination to the Department of Labor, a basic, normative fee customarily charged by a physician in a given specialty for each such examination, shall be paid to the examining medical practitioner, which fee shall be charged to the administration account. Upon recommendation of the Director and upon a finding that an increase or decrease in the customary or "fair market" fee is necessary or appropriate to be cost effective and supply a sufficient pool of examiners, the Commissioner may increase or decrease the customary fee pursuant to a schedule issued by the Commissioner on a Statewide or county basis for one or more of these groups of examiners. In cases requiring the services of a specialist, or in cases requiring clinical tests supporting the diagnosis, the Commissioner or his or her designee shall, in his or her discretion, authorize such services or tests, the fees to be fixed in advance, not to exceed the fees professionally established for such services or tests by the appropriate state or county organization, whichever is the lesser.

(h) The responsibility for coverage shall be established by the covered individual's last employer. The application for benefits shall be processed by the insurer, if the employer has an approved private plan and the individual is covered by that plan, or the State plan if the employer has State plan coverage. However, claims coming within the purview of N.J.A.C. 12:18–1.5, 2.10 or 3.5 shall be governed thereby.

As amended, R.1974 d.284, effective October 17, 1974.
See: 6 N.J.R. 68(e), 6 N.J.R. 437(b).
Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
In (d) and (e), deleted references to N.J.S.A. 43:21–3 throughout; and in (f) and (g), substituted references to medical practitioners for references to physicians, dentists, podiatrists, chiropractors, practicing psychologists, public health nurses, and optometrists throughout.
Amended by R.2000 d.327, effective August 7, 2000.
See: 32 N.J.R. 169(a), 32 N.J.R. 1700(a), 32 N.J.R. 2908(a).
Rewrote (f).
Amended by R.2003 d.214, effective May 19, 2003.
See: 35 N.J.R. 1039(a), 35 N.J.R. 2226(a).
Rewrote (g); added (h).

12:18–3.2 Notice and proof of disability

(a) Within 30 days after the commencement of a period of disability, a written notice of disability, on which a claim for State plan benefits is based, shall be furnished to the Division by or on behalf of the person claiming benefits. The notice need not be on any prescribed form but shall state the claimant's full name, address and valid social security number, as well as the date on which claimant was too sick (or disabled) to work. The filing of Form DS–1 (Proof and Claim for Disability Benefits) shall constitute notice of disability.

(b) Proof of disability on which a claim for benefits under the State plan is based shall be furnished by any claimant who expects to be or has been totally unable to perform the duties of his or her employment for a period of eight or more consecutive days and is under the care of a licensed medical practitioner. A claimant's authorized representative may furnish the proof of disability and file a claim for benefits on behalf of the claimant. The proof and claim accompanied by a certification of the attending licensed medical practitioner, shall be furnished to the Division, on Form DS–1 (Proof and Claim for Disability Benefits) not later than 30 days after the commencement of the period of disability for which benefits are claimed. A continued claim form on which the claimant must provide additional medical information in order to continue receiving benefits shall be filed as proof of continued disability when requested by the Division.

(c) A "period of disability" is payable from the first day of disability if the claimant receives medical care by a licensed medical practitioner within 10 days of the first day of disability. If the claimant fails to furnish such proof, benefits shall be payable from the first day of medical care.

(d) The failure to furnish a written notice or proof of disability within the time or manner required by the Act and this Subchapter shall not invalidate or reduce any claim, if it shall be shown to the satisfaction of the Division not to have been reasonably possible to furnish notice or proof and that such notice or proof was furnished as soon as reasonably possible. If such notice or proof is not furnished, the claim shall be reduced and limited to the period commencing 30 days prior to the receipt of the notice or proof of disability.

(e) The Division shall require each claimant to have a valid Social Security Number when filing a claim for benefits. The claimant, upon request of the Division, shall provide proper identification, including proof of a valid Social Security Number, verification of the Social Security Number if there is a discrepancy, and documentation showing his or her legal name and address.

1. If unable to present proof of a valid Social Security Number, proper verification, or other appropriate documentation, the individual shall be determined ineligible for benefits until such time that he or she is able to present the required identification.

2. Any person who refuses or fails to cooperate with the Division in any effort to verify the validity of a Social Security Number, may be held ineligible for benefits from the date of claim and liable to refund any benefits previously paid.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1997 d.143, effective March 17, 1997.
See: 29 N.J.R. 91(a), 29 N.J.R. 898(a).
Added (d).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
Rewrote (a) and (b); inserted a new (c); recodified former (c) as (d), and rewrote the last sentence; and recodified former (d) as (e).

12:18–3.3 Filing of claims for benefits

(a) All claims and other required documents relating thereto may be filed by mail except in those cases where the claimant is notified by the Division that a personal appearance or examination will be required. Filing by mail shall be deemed complete based on the postmark date, or in its absence, the date received by the Division.

(b) Disability benefits shall be payable to any claimant while outside of this State, provided he or she complies with the Act and this Subchapter. In such case, the attending medical practitioner shall be licensed under the laws applicable to the place where the claimant is receiving treatment.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
In (a), rewrote the second sentence; and in (b), substituted references to medical practitioners for references to physicians, dentists, podiatrists, chiropractors, practicing psychologists, and optometrists throughout.

12:18–3.4 Reduction of benefits

(a) The amount of benefits otherwise payable to a claimant under the State plan for any week of disability, or part thereof, shall be reduced by the amount paid concurrently under any governmental or private retirement, pension or permanent disability benefit or allowance program to which his or her most recent employing unit contributed on his or her behalf. If such latter benefits are being paid on a monthly basis, the amount thereof to be deducted for each day of disability shall be determined as 1/30 of such monthly amount, multiplied by seven, and the amount (disregarding any fractional part of a dollar) shall be subtracted from the weekly benefit rate. If such latter benefits are being paid on a weekly basis, the amount thereof to be deducted for each day of disability shall be determined as 1/7 of the weekly amount multiplied by the number of days of disability during that week and that amount (disregarding any fractional part of a dollar) shall be subtracted from the weekly benefit rate.

(b) The amount of benefits payable to a claimant under the State plan for any week of disability, or part thereof, shall not be reduced by the amount of benefits payable under any program as mentioned above, unless one or more payments thereunder have been received by the claimant prior to the date on which the check in payment of benefits under the State plan is issued.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

12:18–3.5 Concurrent coverage

(a) A covered individual is deemed to be in "concurrent employment" if he or she is in employment with two or

more employers the last calendar day of employment preceding the commencement of a period of disability. The term "concurrent employers" means the covered employers with whom the individual was employed on such last day of employment.

(b) The concurrent employers contributing to the State Disability Benefits Fund on behalf of a covered individual in concurrent employment shall be deemed to be his or her "most recent covered employer" for the purpose of computing his or her average weekly wage as defined in the Temporary Disability Benefits Law (N.J.S.A. 43:21–27(j). An individual shall have his or her weekly benefit amount under the State plan computed on the basis of his or her total wages with all such employers during the base weeks in the eight calendar weeks immediately preceding the calendar week in which the disability commenced.

(c) State plan benefits paid to a covered individual in concurrent employment shall be charged to the accounts of the individual's concurrent employers in the same proportion that the individual earned wages from his or her concurrent employers during the 52 calendar weeks immediately preceding the week in which the disability commenced.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
Rewrote the section.

12:18–3.6 Notice to claimant and employer

(a) A claimant shall be given written notice of any decision on his or her claim and of the reason for any denial of his or her claim.

(b) If the "Employer's Statement" on Form DS–1 has not been completed by an employer or his or her representative, a request for information shall be mailed or delivered to the employer or employers by whom the claimant was employed at the commencement of the disability or by whom he or she was last employed if out of employment less than two weeks.

(c) A copy of the decision of eligibility of the claimant stating his or her weekly benefit rate and the probable duration for which benefits will be paid, shall be mailed or delivered to the employer or employers by whom such claimant was employed at the commencement of the disability or by whom he or she was last employed if out of employment less than two weeks. A notice of each payment of benefits shall be given to such employer or employers.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

12:18–3.7 Notice required from employers

(a) Within 10 days after the mailing of a request for information with respect to a period of disability, an employer shall furnish the Division with any information requested or known to him or her which may bear upon the eligibility of the claimant.

(b) If any employer or employing unit fails to respond to the request for information within 10 days after the mailing of such request, the Division shall rely entirely on information from other sources, including an affidavit completed by the claimant to the best of his or her knowledge and belief with respect to his or her wages and time worked. If it is determined that any information in such affidavit is erroneous, no penalty shall be imposed on the claimant except in the event of fraud.

(c) Any employer failing to respond to a request for information within the prescribed time period shall be subject to the penalties provided under N.J.S.A. 43:21–55(b).

(d) The employer, within two working days after receipt of the decision of eligibility, shall furnish the Division with any information known to him or her bearing upon the eligibility of the claimant or duration of payments to be made.

(e) If after receipt of a decision of eligibility an employer acquires information which may render the claimant ineligible for benefits or reduce the rate or amount of benefits, such employer shall immediately forward the information to the Division.

(f) Whenever a decision of eligibility with respect to a period of disability is based upon information other than that supplied by an employer because such employer failed to respond to a request for information, such decision of eligibility and any subsequent determination thereunder shall be incontestable by the non-complying employer, as to any charges to his or her employer's account under N.J.S.A. 43:21–7(e) for benefits paid prior to the close of the calendar week following the receipt of his or her reply. Such decision of eligibility shall be altered if necessary upon receipt of information from the employer, and any benefits paid or payable with respect to weeks or parts thereof occurring subsequent to the close of the calendar week following the receipt of the employer's reply shall be paid in accordance with such altered decision of eligibility.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
In (a), substituted "10 days" for "seven days" following "Within", and deleted "commencing on or after January 1, 1953" following "disability"; rewrote (b); inserted a new (c); recodified former (c) and (d) as (d) and (e); and recodified former (e) as (f), and deleted "commencing after December 31, 1952" following "disability".

12:18–3.8 Filing of appeals by claimants or employers

Unless the claimant or the employer, within seven calendar days after the delivery of a determination or notification thereof, or within 10 calendar days after such notification was mailed to his or her last-known address, files an appeal from such determination, it shall be final and benefits shall be paid or denied in accordance therewith, except for such determinations as may be altered as provided in N.J.A.C. 12:18–3.7.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

12:18–3.9 Rules on appeal

The rules of the Board of Review shall govern appeals in disability benefit cases under the State plan. See appeal rules at N.J.A.C. 12:20.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
Substituted a reference to N.J.A.C. 12:20 for a reference to N.J.A.C. 12:20–4 at the end.

12:18–3.10 (Reserved)

12:18–3.11 Reduced work week

(a) Benefits shall be compensable under N.J.S.A. 43:21–29 for any period of disability "resulting in the individual's total inability to perform the duties of employment." Benefits shall also be compensable at a fractional part of the week as provided in N.J.S.A. 43:21–40 in such cases where the claimant was in employment with a full-time employer and a part-time employer immediately preceding the period of disability if the claimant is unable to perform the duties of his or her regular full-time employment, but he or she is able to perform totally different duties with his or her part-time employer.

(b) Benefits shall not be compensable in situations where the individual returns to work for the full-time employer on a reduced work schedule since the individual is no longer totally unable to perform the duties of his or her employment.

New Rule, R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

APPENDIX

CHAPTER 12A

PRIVATE PLAN TEMPORARY DISABILITY INSURANCE CASES

Authority

N.J.S.A. 52:14F–5(e), (f) and (g), 34:1A–3(e), 43:21–6(d) through (f), 43:21–10 and 17, and 43:21–25 et seq.

Source and Effective Date

R.1999 d.291, effective July 29, 1999.
See: 31 N.J.R. 1550(a), 31 N.J.R. 2603(a).

Executive Order No. 66(1978) Expiration Date

Chapter 12A, Private Plan Temporary Disability Insurance Cases, expires on July 29, 2004.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. HEARING APPLICABILITY
1:12A–1.1 Applicability

SUBCHAPTER 2. DEFINITIONS
1:12A–2.1 Definitions

SUBCHAPTERS 3 AND 4. (RESERVED)
SUBCHAPTER 5. REPRESENTATION
1:12A–5.1 Representation

SUBCHAPTERS 6 THROUGH 8. (RESERVED)
SUBCHAPTER 9. SCHEDULING
1:12A–9.1 Informal hearing
1:12A–9.2 Notice of formal hearing

SUBCHAPTER 10. DISCOVERY
1:12A–10.1 Inspection of records

SUBCHAPTER 11. SUBPOENAS
1:12A–11.1 Issuance of subpoenas
1:12A–11.2 Witness fees

SUBCHAPTERS 12 AND 13. (RESERVED)
SUBCHAPTER 14. CONDUCT OF CASES
1:12A–14.1 Conduct of hearings
1:12A–14.2 Dismissal of complaint

SUBCHAPTER 15. DECISIONS
1:12A–15.1 Rendition of decision
1:12A–15.2 Correction of determination

SUBCHAPTER 1. HEARING APPLICABILITY

1:12A–1.1 Applicability

The rules in this chapter shall apply to private plan temporary disability insurance cases heard by hearing officers of the Department of Labor pursuant to N.J.S.A. 43:21–50(a) (see also N.J.A.C. 12:18). State plan temporary disability cases shall be heard by the Board of Review pursuant to N.J.S.A. 43:21–50(b), in accordance with N.J.A.C. 1:12.

SUBCHAPTER 2. DEFINITIONS

1:12A–2.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Temporary Disability Benefits Law, N.J.S.A. 43:21–25 et seq.

"Division" means the Division of Unemployment and Temporary Disability Insurance in the Department of Labor.

"Hearing officer" means the individual assigned to hear and decide appeals concerning private plan temporary disability benefits. In so doing, the hearing officer acts as agency head.

SUBCHAPTERS 3 AND 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:12A–5.1 Representation

Any claimant or employer may represent himself or herself or be represented by an attorney or non-attorney pursuant to N.J.S.A. 43:21–17.

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING

1:12A–9.1 Informal hearing

After the filing of a complaint, the Division shall conduct such investigations and informal hearings as may be necessary to determine the facts and settle the issues and, pending a disposition, a formal hearing shall not be scheduled.

1:12A–9.2 Notice of formal hearing

(a) If the issues raised by the complaint are not otherwise settled, they shall be referred to a hearing officer, who shall afford the interested parties thereto a reasonable opportunity for a full, fair and impartial hearing, in accordance with the procedure required under this chapter.

(b) Written notices of the time and place of any hearing shall be given to the claimant and employer, or their authorized representatives, insurer or organization paying benefits, and all other parties in interest at least five days before the date of hearing, but a shorter notice may be given if not prejudicial to the parties.

(c) A party to whom a notice of appeal has been sent shall be ready and present with all evidence and necessary witnesses at the time and place specified and shall be prepared to dispose of all issues and questions involved in the proceeding.

(d) A notice of hearing may be served personally or by certified or registered mail or by telegram upon a party or his or her duly authorized representative.

SUBCHAPTER 10. DISCOVERY

1:12A–10.1 Inspection of records

(a) Orders for the production or inspection of records of the Division may be issued in any proceeding before the hearing officer, but only to the extent necessary for the purpose of the proceeding and to enable any party to the proceeding to fully discharge his or her obligation or safeguard his or her rights under the Act.

(b) A request for the production or inspection of records shall be addressed to the hearing officer, and shall state clearly the nature of the information desired and the reason therefor. The hearing officer may determine whether or not the request shall be granted and, if granted, inspection of the records may be allowed or a copy of the records furnished.

SUBCHAPTER 11. SUBPOENAS

1:12A-11.1 Issuance of subpoenas

(a) The hearing officer shall have the power to administer oaths, take depositions, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records.

(b) Subpoenas to compel the attendance of witnesses or production of records shall be issued by the hearing officer only upon the showing of the necessity therefor by the party applying for the issuance of such subpoena.

1:12A-11.2 Witness fees

(a) Witness fees at the rate of $1.00 for each day of attendance upon a hearing in response to a subpoena to testify and mileage at the rate of $0.25 per mile from the residence of the witness to the place of hearing and return, shall be paid upon presentation of a voucher signed by the individual entitled thereto and properly certified by a member of the hearing officer before whom the individual appeared as a witness.

(b) Witness fees at the rate of $2.00 for each day of attendance upon a hearing in response to a subpoena duces tecum and mileage at the rate of $0.25 per mile from the residence of the witness to the place of hearing and return, shall be paid upon the presentation of a voucher signed by the individual entitled thereto and properly certified by the hearing officer before whom the individual appeared as a witness.

SUBCHAPTERS 12 AND 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:12A-14.1 Conduct of hearings

(a) The hearing before the hearing officer shall be conducted in such order and manner as may provide a fair and impartial hearing to ascertain the facts and determine the rights of parties.

(b) At such hearing, evidence exclusive of ex parte affidavits may be produced by any party, but the hearing officer shall not be bound by the rules of evidence.

(c) The hearing officer shall open the hearing by ascertaining the facts and summarizing the issues involved on the record.

(d) Any individual who is a party, or an attorney or non-attorney representing a party, may examine or cross-examine witnesses, inspect documents and explain or rebut any evidence. The hearing officer may examine each party or witness to such extent as he or she deems necessary.

(e) Any number of proceedings before the hearing officer may be consolidated for the purpose of hearing when the facts and circumstances are similar in nature and the rights of any party will not be prejudiced thereby. Notice of such consolidation shall be given to the parties or their representatives.

(f) All testimony at a hearing shall be under oath or affirmation and recorded, but need not be transcribed unless the order on the disputed claim is to be reviewed.

(g) The hearing officer may take additional evidence as he or she deems necessary, provided the parties shall be given proper notice of the time and place of hearing.

(h) The parties may stipulate the facts and issues involved and based thereon the hearing officer may make a determination and an order disposing of the issues which shall be final and binding.

1:12A-14.2 Dismissal of complaint

(a) After due notice of the time and place of hearing or an adjourned hearing, if any party fails or neglects to appear, the issues may be decided upon the basis of the evidence available, the complaint may be dismissed or evidence may be taken from the parties and witnesses appearing and the case disposed of in accordance with such evidence. A complaint may be dismissed for failure to prosecute without good cause within a reasonable time. All parties shall be notified of the dismissal and the reasons therefor.

(b) Any complaint dismissed by reason of the failure to appear at a scheduled hearing or failure to prosecute may be reconsidered by the hearing officer provided good cause is shown for such failure and an application for reopening the proceeding is made within 10 days after mailing or notification of the order of dismissal.

(c) A pending complaint, with the approval of the hearing officer, may be withdrawn by the complainant, in writing, or orally at the time of hearing. All parties to the proceeding shall be notified of the withdrawal.

SUBCHAPTER 15. DECISIONS

1:12A–15.1 Rendition of decision

(a) Upon the completion of any hearing, the hearing officer shall promptly make a determination of facts, and a signed written order disposing of the issues presented, which shall be final and binding on the claimant, the employer, the insurer, the organization paying benefits and all other parties. The decision shall set forth a statement of the facts involved, the reasons and the order.

(b) A copy of such order shall be served upon each of the parties or their duly authorized representatives by registered mail, addressed to his or her last known address.

(c) The order of the hearing officer shall be final and benefits paid or denied in accordance with the order.

(d) Any appeal of the order shall be in accordance with the Rules of Court.

1:12A–15.2 Correction of determination

On application duly made or on his or her own motion, the hearing officer may revise a determination of facts and the order, for the purpose of correcting clerical or typographic errors.